

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

KURTIS E. ARMANN, }
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Petitioner, }
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v. }
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WARDEN, FCI-MCKEAN, }
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Respondent. }

Civil Action No. 04-118 Erie

MEMORANDUM OPINION AND ORDER

McLAUGHLIN, SEAN, J., J.

Presently pending before the Court is the Respondent's Appeal of the Magistrate Judge's Order granting an evidentiary hearing on Petitioner's Petition for Writ of Habeas Corpus [Doc. No. 46].

We held a telephonic status conference on June 2, 2006 and ordered that the record be supplemented with the following documents filed by the parties before the CAAF: (1) [Petitioner's] Brief in Support of Petition for New Trial filed by Petitioner's counsel [Doc. No. 60]; (2) [Petitioner's] Motion to Attach Documents, Exhibit 1, Petitioner's *Grostofen* submission in support of his petition for new trial [Doc. No. 59]; (3) [Respondent's] Objection to [Petitioner's] Motion to Attach Documents, filed by Respondent [Doc. No. 62]; and (4) [Respondent's] Brief in Response to [Petitioner's] Petition for New Trial, filed by Respondent [Doc. No. 58]. *See Status Conference Tr., June 2, 2006* [Doc. No. 63].

In light of this additional evidence, and based upon the parties representations that the record is now fully complete, *see Status Conference Tr., June 2, 2006 pp. 10-12*, we are of the opinion that the matter should be remanded to the Magistrate Judge for reconsideration of her order granting an evidentiary hearing following her review of this additional evidence in the first instance.

AND NOW, this 10th day of July, 2006, upon consideration of Respondent's Appeal of the Magistrate Judge's Order granting an evidentiary hearing on Petitioner's Petition for Writ of

Habeas Corpus [Doc. No. 46], and for the reasons set forth above,

IT IS HEREBY ORDERED that Respondent's Appeal is DENIED and the matter is REMANDED to the Magistrate Judge for further proceedings.

s/ Sean J. McLaughlin
United States District Judge

cm: All parties of record.
Magistrate Judge Susan Paradise Baxter